IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1674

SANTA ROSA BAND OF INDIANS, ET AL.,
Plaintiffs and Respondents,

v.

KINGS COUNTY, ET AL.,
Defendants and Petitioners.

Brief for the City of Palm Springs, California, as Amicus Curiae in Support of Petition for Writ of Certiorari

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CITATIONS

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This brief is submitted in support of the petition of Kings County, California, et al., for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in *Santa Rosa Band of Indians, et al.* v. *Kings County, et al.*, No. 74-1565 (9th Cir. rehearing den. March 26, 1976). This brief is filed pursuant to Rule 42.4 of this Court.

DESCRIPTION AND INTEREST OF AMICUS CURIAE

The City of Palm Springs (hereinafter "city" or "Palm Springs") is a municipal corporation incorporated in 1938 pursuant to § 34300 *et seq.* of the Government Code of California. Within the city's boundaries are over 7,000 acres of land comprising elements of the Agua Caliente Indian Reservation established pursuant to the Mission Indian Act of 1891, 26 Stat. 712. All reservation lands within the city, except for about 175 acres which is retained as tribal property, have been allotted to individual members of the Agua Caliente Band of Mission Indians (hereinafter the "band") pursuant to the Act of March 2, 1917, 39 Stat. 969 as supplemented by the Act of September 21, 1959, 25 U.S.C. §§ 951-961. The band numbers approximately 172 members, including minor children.

The reservation lands are distributed throughout the city in a checkerboard pattern, largely in square mile sections (640 acres) conforming to the United States public land survey system. This checkerboard pattern is depicted on Appendix A, which also depicts the ownership status of such lands as of November 7, 1974.

Over 2900 acres of reservation lands have been sold with the approval of the Secretary of the Interior as required by law in such cases, *e.g.*, 25 U.S.C. § 956, and are no longer in Indian ownership. Title to the balance is held by the United States in trust for the band in the case of the 175 acres of tribal land, and in trust for individual allottees in the case of the balance. Such lands are hereinafter referred to as "trust," "restricted," or "Indian" lands. 1450 acres of ~~tribal~~ trust lands are currently under long term

leases, pursuant to 25 U.S.C. § 415, to non-Indian developers for residential, commercial, resort, country club and similar recreation oriented purposes. An additional 1750 acres of trust lands possess development potential but are not now leased. The Indian lands which are either leased or have development potential, like similar non-Indian owned lands within the city, command high rental and sales prices.

Palms Springs enjoys a national and international reputation as a resort and residential community of the highest caliber. The economy of the city rests upon its residential, resort and vacation character. Manufacturing industry is almost totally non-existent. Land use planning and zoning within the city have been carefully structured to maintain Palm Springs' desirability as a community of high environmental and ecologically sound standards, with emphasis upon low density, open space and limited structural heights.

Interest in Palm Springs burgeoned following World War II. The inapplicability to the checkerboarded Indian lands of the legal system prevailing in the balance of Palm Springs was recognized as a principal obstacle to economic development of the Indian lands. With the support of both Indian and non-Indian segments of the Palm Springs community (H. Rept. No. 956, 81st Cong., 1st Sess. (1949) at 2) Congress in 1949 enacted P.L. 322, 81st Cong., 1st Sess. (63 Stat. 704), section 1 of which provided that after January 1, 1950, all lands in the Agua Caliente Indian Reservation would be subject to the civil and criminal laws of the State of California, but that nothing therein should authorize the alienation, encumbrance or taxation of Indian trust lands.

In explaining the bill, the House Public Land Committee noted that Palm Springs was the only place in the United States where Indian lands were intermingled in a checkerboard pattern with highly developed urban lands of great value and that administration of the restricted Indian lands on the reservation "presented a unique problem to the Federal Government." The Committee bill was regarded as a "noncontroversial" attempt to clarify some of the problems of administration. "As the Indian lands are intermingled with the non-Indian lands, law and order could be more efficiently and effectively administered by the State than by the Indian Service. . . ." *Id.* at 1 and 2. The Senate Report, S. Rept. No. 669 (1949), was essentially similar.

The Congressman whose district included the Palm Springs area had explained to the House Committee that the purpose of Section 1 was to confer "jurisdiction over the police, fire and sanitary regulations, and so on, upon the State of California." Hearings on H.R. 4616 before the Subcommittee on Indian Affairs of the Committee on Public Lands, 81st Cong., 1st Sess., Ser. 16, at 132 (1949).

The Assistant to the Commissioner of Indian Affairs had testified that Indian and non-Indian lands in Palm Springs were so completely mixed together that it was not feasible to have two sets of law enforcement authorities both in operation in this area. With specific reference to zoning, that witness noted that the city lacked authority to zone the Indian lands with a resultant lack of any "over-all pattern . . . needed for protecting property values and increasing the maximum utilization of the city as a whole." *Id.* at 3. His solution was to confer on the state criminal jurisdiction over offenses committed by or against Indians on the reservation and to confer zoning jurisdiction over the reservation lands on the Secretary of the Interior. *Id.* That solution was rejected. Instead, as a compromise measure backed by all parties, including the Indians themselves, the Committee reported out, and Congress adopted, P.L. 322.

Zoning and other Palm Springs land use regulations were thereupon applied to both restricted Indian and to non-Indian lands within the city.

In 1953 came the enactment of P.L. 280 (Act of August 15, 1953, 67 Stat. 588), section 4 of which, pertaining to civil law jurisdiction, added section 1360 to Title 28 U.S.C., the construction of which by the Ninth Circuit is the subject of the petition for certiorari filed by Kings County, et al.[1] Section 5 of P.L. 280 repealed section 1 of the 1949 Act (P.L. 322) which, as above noted, applied only to the Agua Caliente reservation.

The legislative history of P.L. 280 is silent as to why the 1949 provision specifically dealing with Palm Springs was repealed. The legislative history of predecessor legislation reported in 1952 by the House Interior and Insular Affairs Committee, but not enacted, explains it.

The 1952 measure, H.R. 3624, 82nd Cong., 2d Sess., as originally introduced would simply have conferred jurisdiction on the State of California with respect to criminal offenses committed on all Indian reservations within the state. H. Rept. No. 2161, 82nd Cong., 2d Sess.

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[1] P.L. 280 also, as section 2, added section 1162 to Title 18 U.S.C., dealing with state criminal jurisdiction in the identical states and areas to which 28 U.S.C. § 1360 applied.

At the suggestion of the Department of the Interior, H.R. 3624 was revised by the House Interior and Insular Affairs Committee (and reported favorably) to also exclude the State of California from the application of the Indian liquor laws, and, of greater relevance here, to extend civil jurisdiction of the State of California over all Indian country within the state, rather than to the Agua Caliente reservation alone, as was the case under section 1 of the 1949 Act. Like P.L. 280, the extension of civil jurisdiction was not to authorize the alienation, encumbrance or taxation of restricted Indian property. The withholding of jurisdiction to regulate the use of restricted Indian property, however, was significantly broader than that finally adopted by Congress in P.L. 280. In H.R. 3624, as recommended by the Department of the Interior and approved by the House Committee, the exception was across the board—no regulation of the use of restricted Indian property was authorized. *Id.* By way of contrast, P.L. 280 [28 U.S.C.A. § 1360(b)] narrowed the withholding from jurisdiction to regulation "in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto."

The Interior Department's report to the House Committee on H.R. 3624 explained that extension of California's civil and criminal jurisdiction over Indian land throughout the state should be accompanied by a repeal of the separate Agua Caliente provisions in order that the same jurisdictional statute would be applicable to all Indian country in California. Congress accepted this recommendation; hence, P.L. 280's repeal of section 1 of the 1949 Act.

With the enactment of P.L. 280, Palm Springs continued to apply its zoning and other land use regulations to restricted Indian lands. However, in 1965, the Tribal Council of the Agua Caliente band brought suit against the City of Palm Springs to enjoin the city from applying its zoning laws to Indian trust lands. *Agua Caliente Band of Mission Indians' Tribal Council* v. *City of Palm Springs, et al.,* Civil No. 65-564-MC (C.D. Cal. 1965).

Two months after the Tribal council's suit was instituted, the Department of the Interior promulgated (30 Fed. Reg. 7520 [June 9, 1965]) the regulation now codified as 25 CFR § 1.4 (1975), the validity of which is one of the issues in the case at bar. Later that month, the Interior Department purported to adopt and make applicable to leased Indian trust lands within Palm Springs, the city's zoning code and other land use regulations as they then existed or as they might thereafter be amended with exceptions which relaxed the application of the zoning code to such lands in seven particulars. 30 Fed. Reg. 8172 (June 25, 1965).

The Tribal Council's suit was dismissed by order of the district court April 12, 1967, pursuant to a settlement reached by the parties and incorporated in a stipulated judgment approved by the court July 27, 1966. Under that settlement, the Tribal Council established an Advisory Indian Land Planning Commission, to serve in a consultative and advisory capacity to the city's planning commission and to the city council on zoning and land use matters involving trust lands, and the city revised the zoning ordinance to incorporate the exceptions prescribed by the Interior Department in the Federal Register Notice of June 25, 1965. The stipulated judgment further provided that it would no

longer be binding if either the Ninth Circuit or this Court were to hold that a state, or political subdivision thereof, is not subject to the jurisdiction of the Department of the Interior in regulating the use of Indian trust land covered by P.L. 280.

Early in 1971, the Tribal Council again brought an action against the city challenging the city's authority to zone restricted Indian lands. *Agua Caliente Band, et al.* v. *City of Palm Springs, et al.,* Civil No. 71-767-JWC (C.D. Cal. 1971). Reaching the merits, the district court held that (1) the portions of the Agua Caliente reservation within the city's exterior boundaries constituted a part of the city, (2) 25 CFR § 1.4 was invalid as conflicting with P.L. 280, and (3) the city had zoning jurisdiction over restricted Indian lands under P.L. 280. *Agua Caliente Band* v. *City of Palm Springs,* 347 F. Supp. 42 (C.D. Cal. 1972).

On appeal, the Ninth Circuit vacated the district court's decision and remanded the case to the district court on the ground that the record was inadequate to determine whether the cause is justiciable and, if so, the issues, if any, resolved or foreclosed by the judgment in the prior litigation *Agua Caliente Band, et al.* v. *City of Palm Springs, et al.,* No. 72-2504 (9th Cir., Jan. 24, 1975, unreported).

The parties have filed with the district court, memoranda on the issues raised by the remand and also on the effect on the litigation of the Ninth Circuit's decision in the case at bar. Further proceedings are pending. In the meantime, the Commissioner of Indian Affairs has given notice that he proposes to suspend the operation of the city's zoning ordinance to certain tracts of leased restricted lands so as to permit development thereon prohibited by the present zoning. 41 Fed. Reg. 7533 (Feb 19, 1976).

The Ninth Circuit's decision poses the threat of fragmented land use regulations to lands which are, in the words of the Interior Department in 1949 (*See* H.R. 4616 Hearings, *supra* at 4), "completely mixed together." As is apparent from Appendix A, that intermixture is significantly greater today and the need for unitary jurisdiction is even more acute. Where in 1949 Palm Springs had a total winter population of about 20,000, of which 5,000 non-Indians resided on the reservation lands within the city, the winter population today is about 60,000 and the permanent year-round population is 27,000.

In a city whose existence and economy is totally dependent upon its attractiveness as a recreation, resort and "second home" community, the development and maintenance of sound land use planning and zoning would, under any circumstances, present a most challeging aspect of municipal government. With fragmented jurisdiction, the difficulties of maintaining sound land use standards and zoning become immeasurably compounded. Inevitably, dual planning and zoning authority, even assuming identical standards and regulations, will, in such a confined area, give rise to divergent results as the rules are applied by separate authority.

This amicus curiae, therefore, has a significant interest in correction by this Court of the Ninth Circuit's erroneous interpretations of P.L. 280.

REASONS FOR GRANTING THE WRIT

1. Importance of the Case

This amicus curiae joins the petitioners in their analysis of the importance of the case. We would add two thoughts.

First. As is clear from the foregoing, the impact of the decision below in P.L. 280 states is felt not only at the county, but at the city level of government as well. In that respect it is not remiss to observe that zoning and similar land use regulaions were a response to pressures of growth first felt in urban centers. *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365 (1926). The customary units of local government exercising such authority by delegation from the state were until recently, preponderantly the cities. *See generally*, 8 McQuillin, *Municipal Corporations* §§ 25.02-.03 (3d ed., 1965 rev. vol.); Bosselman and Callies, *The Quiet Revolution in Land Use Control*, 2 (Council on Environmental Quality, 1971); Haar, *Land Use Planning*, 156-158 (2d ed. 1971).

Second. The Ninth Circuit's crabbed interpretation of the reference to state civil laws in 28 U.S.C. § 1360(a) would require P.L. 280 states to stand on their heads their allocations to cities and counties of zoning and planning authority in order to exercise the land use authority purportedly conferred.

Land use regulation is an exercise of state police power. *Euclid* v. *Ambler Realty Co., supra; McQuillin, supra* § 25.05. A city, this court has held, is a political subdivision of the state, created as a convenient agency for the exercise of such governmental powers of the state as may be entrusted to it. *Trenton* v. *New Jersey,*

262 U.S. 181, 185 (1923). Because states have customarily designated cities, and later counties, as the units of government to exercise such functions, it is inconceivable that Congress, in adopting P.L. 280, intended that states *qua* states must directly exercise those functions rather than maintaining their existing distribution of governmental functions among the units of government of their choosing.

The radical departure from usual state patterns of government that the Ninth Circuit's reading of P.L. 280 would require becomes even more incongruous when examined in the light of P.L. 280's lineal ancestor, the 1949 statute, P.L. 322, applicable only to the Agua Caliente reservation. There, as noted, (*See* H.R. 4616 Hearings, *supra* at 4) the sponsor of the legislation spoke of conferring jurisdiction on California over "police, fire, and sanitary regulations and so on". Could the Congress have intended that the California legislature must enact legislation setting up for the Agua Caliente reservation a state fire department and state building and sanitation codes, and to re-enact as state law, the codes of ordinances of Palm Springs and Riverside County (in which Palm Springs is located) in order for P.L. 322 to be operative? The answer is obviously in the negative.

The Congress could not have intended, either by P.L. 322 or by P.L. 280, to mandate such a drastic limitation on "the vast leeway in the management of its internal affairs" possessed by a state. *See Sailors* v. *Kent Board of Education*, 387 U.S. 105, 109 (1967).

2. Merits of the Case

Palm Springs joins the petitioners in their analysis of the merits of the decision below. We would emphasize two points.

First. Zoning by cities and counties in California is no longer simply a matter of delegation to those units of government; it is now mandated by state law prescribing controlling standards and criteria.

Section 7, Article XI of the California Constitution (Deering 1974) authorizes counties and cities to enact local police, sanitary and other ordinances and regulations not in conflict with general law. Section 65800 of the California Government Code delegates to counties and cities authority to "exercise the maximum degree of control over local zoning matters." However, the State of California is no longer simply a passive delegator of authority in such matters. In 1972, California amended its Government Code to require that, by July 1, 1974, county and city zoning ordinances be consistent with the "general plan" of the county or city. Government Code § 65860. Development of city and county "general plans" conforming to specified criteria was mandated by the California legislature in 1965. Government Code §§ 65101, 65300 *et seq.*

In 1973, the Supreme Court of California thus described the California statutes relating to planning and zoning:

> Under the Government Code, the legislative body of each city and county must establish a planning agency (§ 65100) which shall adopt a comprehensive, long-term general plan for the physical development of the city or county (§ 65300). As noted above, the plan must include a circulation element showing the general location

> of existing and proposed streets (§ 65302, subd. (b)). The plan may be changed after notice and hearing if the legislative body deems a change to be in the public interest (§ 65356.1). Cooperation between city and county planning agencies is encouraged (§§ 65305, 65306, 65650, 65651), and a city and county may adopt the same general plan (§65360). * * * Recent legislation requires county and city zoning ordinances to be consistent with the general plan by January 1, 1974. (§ 65860, subd. (a); Stats. 1973, ch. 120.) [2]

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[2] The Government Code contains more specific provisions regarding the implementation of other types of plans. For example, planning agencies are authorized to adopt a specific plan (§ 65450 et seq.) and to include regulations limiting the location of buildings and other improvements in planned rights of way (§ 65451). Another type of plan specified by the code is an open space plan (§ 65560 et seq.); building permits may not be issued unless the proposed construction is consistent with the local open space plan (§ 65567).

Selby Realty Co. v. *City of San Buenaventura*, 10 Cal. 3d 110, 116 (1970).

Second. Congress' treatment in P.L. 89-715 (25 U.S.C. §§ 416-416j) of zoning and other land use regulations is persuasive evidence that county and city zoning ordinances are "state civil laws" authorized under P.L. 280 and that they are not "encumbrances" within the meaning of P.L. 280.

P.L. 89-715, enacted in 1966, authorizes the leasing of Indian lands on two reservations in Arizona, a non-P.L. 280 state. One, the San Xavier reservation is near Tucson. The other, the Salt River Pima-Maricopa, is near Phoenix.

Section 9 (25 U.S.C. § 416h) of the Act provides:

> The Papago Council and the Salt River Pima-Maricopa Community Council, with the consent of

> the Secretary of the Interior, are hereby authorized, for their respective reservations, to enact zoning, building and sanitary regulations covering the lands on their reservations for which leasing authority is granted by this Act *in the absence of State civil and criminal jurisdiction over such particular lands,* and said councils may contract with local municipalities for assistance in preparing such regulations. (Emphasis added.)

The legislation also (§ 10) contained the familiar disclaimer against authorizing alienation, encumbrance or taxation of Indian trust property and (§ 2) conferred jurisdiction on the local federal district court over litigation brought by the State of Arizona or any political subdivision contiguous to the reservations to abate nuisances, or conditions hazardous to health or property, created by lessees of the Indian lands in question.

The legislative history of P.L. 89-715 shows that these provisions were included because Arizona had not brought itself under P.L. 280, thereby leaving a jurisdictional void that was delaying the opportunity to lease the lands in question. *See,* remarks of Congressman Haley, Chairman of the Indian Affairs Subcommittee of the House Interior Committee and floor manager of the bill, 112 Cong. Rec. 27000 (1966).

CONCLUSION

In view of the gravity of the issues raised in P.L. 280 states and the error of the court below, the writ of certiorari should be granted.

Respectfully submitted,

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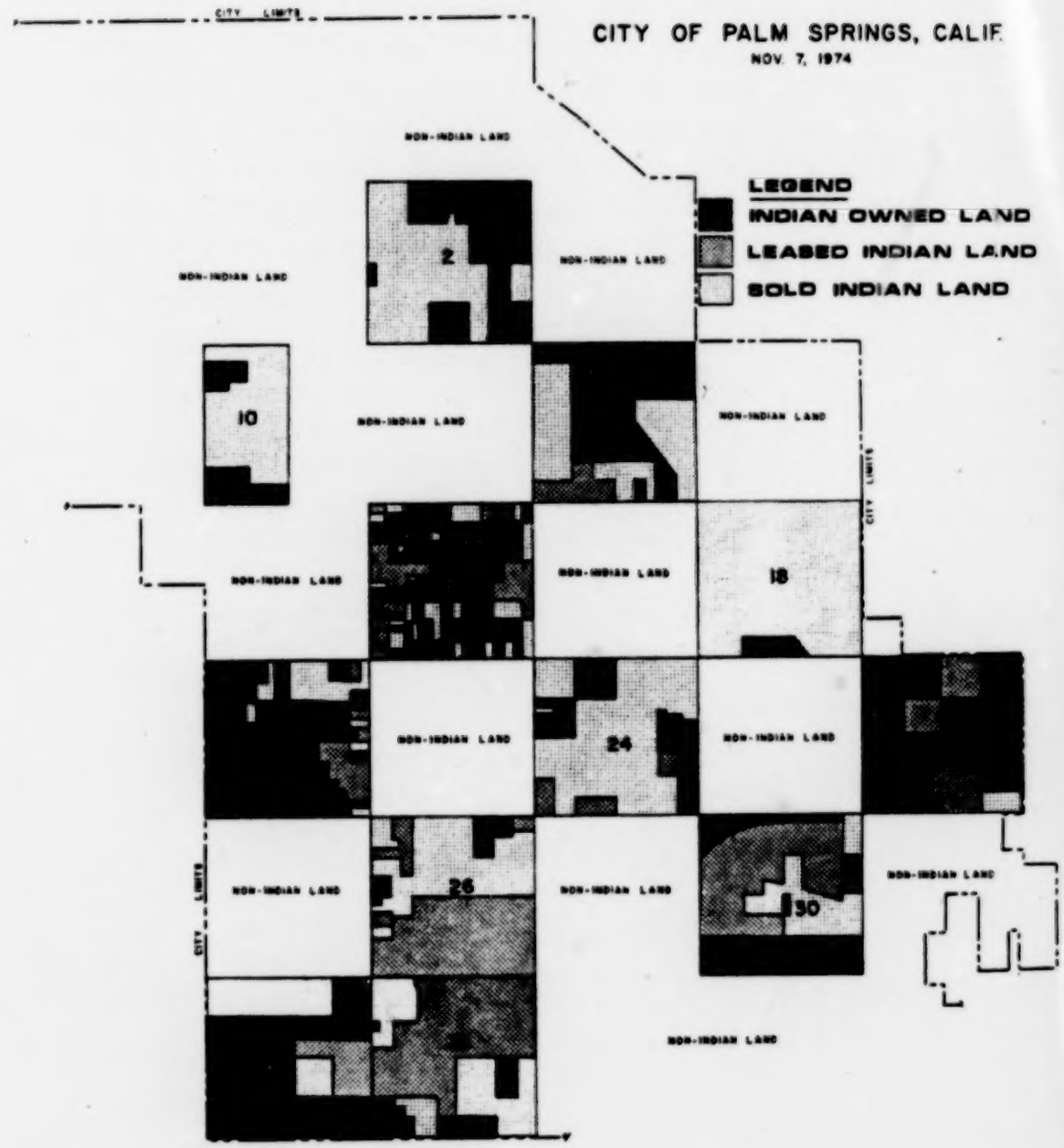
Dated June 4, 1976

APPENDIX A


CITY OF PALM SPRINGS, CALIF.
NOV. 7, 1974
LEGEND
INDIAN OWNED LAND
LEASED INDIAN LAND
SOLD INDIAN LAND
CITY LIMITS
NON-INDIAN LAND
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Certificate of Service

I, Edward Weinberg, hereby certify that on June 4, 1976 the Brief for The City of Palm Springs, California as Amicus Curiae in Support of Petition for Writ of Certiorari in the above captioned proceeding was served upon all counsel, pursuant to Rule 33 of the Supreme Court Rules, by mailing copies by first class mail, postage prepaid, as follows:

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